

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
(Atlanta)

IN RE:
Mary Ryan Mzee,

Debtor(s).

Progress Residential Direct Services, LLC, as
agent for Progress Residential Borrower 14,
LLC,

Movant

v.

Mary Ryan Mzee, Debtor(s);
James Washington, Codebtor(s);
and Nancy J. Whaley, Trustee,

Respondents.

CASE NO. 23-54923-jwc
CHAPTER 13

Judge Jeffery W. Cavender

CONTESTED MATTER

**MOTION TO LIFT STAY FOR DEBTOR'S NONCOMPLIANCE WITH STRICT
COMPLIANCE ORDER**

COMES NOW Progress Residential Direct Services, LLC, as agent for Progress Residential Borrower 14, LLC ("Movant"), and files this Motion to Lift Stay for Debtor's Noncompliance with Strict Compliance Order and shows the Court as follows:

1.

Debtor leases certain real property from Movant known as 6432 Meyer Dr, Morrow, GA 30260, (hereinafter, the "Property"). Movant filed a Motion for Relief from Stay [Doc. 12], which was subsequently denied with a strict compliance order.

2.

This Court entered an Order Denying Motion for Relief From Stay With Strict Compliance ("Compliance Order") on July 24, 2023 [Doc. 14].

3.

The terms of the Compliance Order required Debtor to pay the post-petition arrearage through July 2023 in the amount of \$4,180.26 by July 18, 2023, as stipulated in the Court's Order, and resume strict compliance with the Lease and monthly rental payments, including all utilities, beginning August 1, 2023, for the duration of the Lease through March 26, 2025. Rent is due under the lease agreement on or before the first day of each month.

4.

Any default under the terms of the Compliance Order requires Movant to send notice of said default to Debtor, Codebtor, and Debtors' attorney. Debtor has five (5) days from receipt of said notice to cure the default.

5.

Debtor failed to tender the required amounts under the Compliance Order on time or in full.

6.

On June 17, 2024, counsel for Movant sent a Notice of Default pursuant to the terms of the Compliance Order ("Notice of Default"). *See* Notice of Default attached hereto as **Exhibit 1**.

7.

Debtor failed to timely cure the default by tendering the sums due thereunder on or before the fifth (5th) day after receipt of said Notice. *See* Affidavit of Debtor's Noncompliance, attached hereto as **Exhibit 2**.

8.

Movant therefore moves this Court to enter an Order granting it relief from the automatic stay as set forth within the Compliance Order without further hearing.

9.

Movant is otherwise unable to exercise its state law remedies under the terms of the Lease Agreement so long as the automatic stay remains in effect.

WHEREFORE, Movant PROGRESS RESIDENTIAL DIRECT SERVICES, LLC, AS AGENT FOR PROGRESS RESIDENTIAL BORROWER 14, LLC, prays for the following relief:

- (a) That this Court grant Movant's Motion for Relief From Stay;
- (b) That the automatic stay pursuant to § 362(d) and 1301 of the Bankruptcy Code be terminated, annulled, modified, and lifted to permit Movant to pursue all remedies available under Georgia law to recover possession of the Property and to allow Movant to apply any security deposit held by Movant to any post-petition amounts which came due under the terms of the Lease, and that the property be abandoned as property of the estate;
- (c) That the Court waive and/or modify Bankruptcy Rule 4001(a)(3) so as to allow Movant to proceed immediately with a dispossessory action;
- (d) That the Court award Movant its attorney's fees and costs in bringing of this Motion; and
- (e) For such other and further relief as this Court deems just and equitable.

Respectfully submitted, this Friday, June 28, 2024.

THE TOTTEN FIRM, LLC
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Atlanta, GA 30350
(404) 692-4342 (Telephone)
mft@tottenfirm.com

/s/ Matthew F. Totten
MATTHEW F. TOTTEN
(Georgia Bar No. 798589)
ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

This is to certify that, in accordance with BLR 5005-5 (Bankr. N.D. Ga.), I have this date electronically filed the within and foregoing ***MOTION TO LIFT STAY FOR DEBTOR'S NONCOMPLIANCE WITH STRICT COMPLIANCE ORDER*** in the above-captioned contested matter with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all parties or counsel of record, and specifically, to counsel of record for the parties in interest in this matter:

Nancy J. Whaley
Standing Chapter 13 Trustee
Suite 120, Truist Plaza Garden Office
303 Peachtree Center Ave.
Atlanta, GA 30303

Stanley J. Kakol, Jr.
The Law Offices of Stanley J. Kakol, Jr.
5353 Fairington Road
Suite C
Lithonia, GA 30038

I have also on this day caused a copy of the pleading to be placed in the first-class United States mail, postage prepaid, addressed to the following recipients not participating in the CM/ECF system as follows:

Mary Mzee, Debtor
6432 Meyer Dr
Morrow, GA 30260

James Washington, Codebtor
6432 Meyer Dr
Morrow, GA 30260

Dated: Friday, June 28, 2024.

THE TOTTEN FIRM, LLC
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